

REMARKS

Claim 22 has been amended to further clarify the subject matter regarded as the invention. Claims 1-3, 5, 6, 9, 11-16, 19 and 22-24 remain pending. Reconsideration of the application is respectfully requested based on the following remarks.

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Priority

In the Office Action, the Examiner alleges that one or more conditions for receiving benefit of priority may be lacking. Regardless of whether priority is available, Applicants distinguish the claimed invention from the references cited by the Examiner, thereby rendering availability of priority moot.

Rejection of Claim 22 under 35 USC § 112, Second Paragraph

In the Office Action, the Examiner rejected claim 22 under 35 U.S.C. §112, second paragraph, as being indefinite. Claim 22 has been amended to obviate the Examiner's concerns and render the rejection under 35 U.S.C. §112, second paragraph, moot.

Patentability of Claims

In the Office Action, the Examiner rejected claims 1-3, 5, 6, 9, 11-16, 19 and 23 under 35 U.S.C. §103(a) as being unpatentable over Santoro et al., US Patent Publication 20030020671 (hereafter "Santoro et al."), in view of Homer et al., US Patent Publication 2002/0042730 A1 (hereafter "Homer et al."); and rejected claims 22 and 24 under 35 U.S.C. §103(a) as being unpatentable over Santoro et al. in view of Nieh et al., "The Design, Implementation and Evaluation of SMART: A Scheduler for Multimedia Applications," Proceedings of the Sixteenth ACM Symposium on Operating Systems

Principles, October 1997 (hereafter "Nieh et al."). These rejections are fully traversed below.

Among other things, claim 1 recites:

coordinating ... performance of the activated operations at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level, the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program.

As to such recited different intra-application priority levels, the Examiner relies on portions of Santoro et al. which concern priorities, i.e., refresh priorities, for tiles of a graphical user interface organized as a grid.

While Santoro et al. provides priorities for tiles in its grid, its priorities are amongst its tiles. Refresh priorities for tiles of a graphical user interface organized as a grid are not different intra-application priority levels for different media-based actions supported by a client media player application program. The rejection in the Office Action is premised on the URL loader 1510 Santoro et al. corresponding to the client media player application program recited in claim 1. However, the URL loader 1510 cannot correspond to the client media player application program of claim 1. According to para. [0119] of Santoro et al. the "URL loader 1510 decides whether content should be obtained afresh by contacting the connection manager 1512, or from content previously stored in cache." The URL loader 1510 is thus not an application program. Nor does the URL loader 1510 have different media-based actions that can be assigned different intra-application priority levels.

In addition, as noted above, the priority levels recited in claim 1 are for different media-based actions and are user-modifiable. More particularly, claim 1 recites "the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program." On page 6 of the Office Action, the Examiner makes reference to paragraphs [0021], [0064], [0089], [0101], [0112], [0166]. However, these referenced paragraphs are, at best, concerned with refresh or retrieval rates for tiles. As such, these refresh or retrieval rates in Santoro et

al. are not for “different media-based actions” that are assigned different priority levels based on user interaction with a client media player application program.

Hence, it is submitted that Santoro et al. clearly does not teach or suggest modifying priority levels for different media-based actions by user interaction with a client media player program. Instead, priorities for tiles in Santoro et al. are primarily set by the grid itself based on type of data or level in grid’s hierarchy. Formally, Santoro et al. expresses that such is so in para. [0090] which states:

The grid assigns a priority to a tile based upon the identifier, or based upon the type of data that the source of the information comprises. Where tiles are ranked into levels, the grid assigns an information source to a tile in a level that is appropriate for the type of data or the identifier associated with the information source. In this way, a tile can be automatically given a priority that is appropriate for the type of information that it is to display.

Any mention of user preferences or user specified rates (retrieval rates, refresh rates) in Santoro et al. is not taught or suggested as being for different media-based actions of a client media player program. Clearly, then Santoro et al. is unable to teach or suggest user-modifiable priorities of different media-based actions of a client media player program as recited in claim 1.

Homer et al. pertains to a rechargeable media distribution and play system. Homer et al. was combined with Santoro et al. on page 6 of the Office Action only for teaching “media-based actions”. Applicants submit, notwithstanding the Examiner’s assertion to the contrary, that there is no reasonable rationale why anyone skilled in the art would reasonably seek to combine Homer et al. with Santoro et al. “A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1397 (2007). However, even if Homer et al. were to be combined with Santoro et al., Homer et al. would not be able to overcome the serious deficiencies of Santoro et al.

Accordingly, for at least the reasons noted above, it is respectfully submitted that claim 1 is patentably distinct from Santoro et al., alone or in combination with Homer et al. In addition, claim 11 pertains to a computer readable medium that can operate

similar to the method discussed above regarding claim 1. As such, for at least reasons similar to those noted above with respect to claim 1, it is submitted that claim 11 is also patentably distinct from Santoro et al., alone or in combination with Homer et al.

Still further, claim 23 pertains to a computer for presenting media to its user. The computer includes a single client media application program operable to enable the user to play, browse, preview, purchase, download and present media items for the benefit of the user. A task manager “manages performance of at least browse, preview, purchase and download operations by assigning user-modifiable priority levels to each of the browse, preview, purchase and download operations, and managing performance of the browse, preview, purchase and download operations in accordance with the assigned user-modifiable priority levels.” Hence, in claim 23, a client media application operates in view of user-modifiable priorities levels assigned to each of the browse, preview, purchase and download operations. Hence, for at least some of the reasons similar to those noted above, it is submitted that claim 23 is also patentably distinct from Santoro et al., alone or in combination with Homer et al.

Based on the foregoing, it is submitted that claims 1, 11 and 23 are patentably distinct from Santoro et al., alone or in combination with Homer et al. Additional limitations recited in the independent claims or the dependent claims are not further discussed because the limitations discussed above are sufficient to distinguish the claimed invention from Santoro et al., alone or in combination with Homer et al. and/or Nieh et al.

Summary

It is submitted that claims 1-3, 5, 6, 9, 11-16, 19 and 22-24 are patentably distinct from Santoro et al. in view of Homer et al. and/or Nieh et al. Reconsideration of the application and an early Notice of Allowance are earnestly solicited.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

If it is determined that additional fees are due, the Commissioner is hereby authorized to charge such fees to Deposit Account 504298 (Order No. 101-P271).

Respectfully submitted,

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